

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MADERA WEST CONDOMINIUM  
ASSOCIATION,

Plaintiff,

v.

FIRST SPECIALTY INSURANCE  
CORPORATION,

Defendant.

CASE NO. C13-0724-JCC

ORDER GRANTING IN PART  
PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff’s motion for summary judgment (Dkt. No. 10). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part the motion (Dkt. No. 10) for the reasons explained herein.

**I. BACKGROUND**

Madera West, LLC (“Madera West”), a non-party to this action, is a developer that converted a 172-unit apartment complex into condominiums and created Plaintiff, the Madera West Condominium Association (“Association”) to maintain, repair, replace or restore common elements of the condominiums. (Dkt. No. 1 at 1–3; Dkt. No. 10 at 2–3.) Madera West hired non-party Steadfast Construction, Inc., to complete work on the project. Madera West and Steadfast entered into a contract dated October 11, 2005, under which Steadfast was to perform

1 “[r]enovation of unit interiors.” (Dkt. No. 11-9 at 1.) On some units, Madera West had Steadfast  
2 apply a coating to exterior decks and make other repairs to decks. (Dkt. No. 11-35 at 4.)

3 Defendant First Specialty Casualty Insurance Company provided Steadfast with two  
4 general liability commercial insurance policies. The first policy was effective August 15, 2004 to  
5 August 15, 2005. (Dkt. No. 11-3 at 11 (Policy No. FCP229002179600).) The second was  
6 effective August 15, 2005 to August 15, 2006. (Dkt. No. 11-5 at 15 (Policy No.  
7 FCP229002179601).) Under the terms of the policies, third parties for whom Steadfast worked  
8 under a written contract requiring indemnification were additional insureds. (Dkt. No. 11-5 at  
9 31.)

10 In March 2009, Plaintiff Association sued Madera West in King County Superior Court,  
11 alleging that construction defects caused property damage to the condos. (Dkt. No. 11-10 at 4–9.)  
12 Madera West tendered the claim to First Specialty. (Dkt. No. 17-1 at 2.) First Specialty declined  
13 Madera West’s tender (Dkt. No. 11-27.) First Specialty’s denial letter asserted that “Madera  
14 West is not an additional insured with respect to this claim” and that “there is no ‘occurrence’  
15 during the policy periods.” (Dkt. No. 11-27 at 1.) First Specialty further asserted that there was  
16 no coverage under the 2005-2006 policy because it includes a “Construction of Residential  
17 Property exclusionary endorsement.” (*Id.*)

18 The Association settled the underlying suit with both Madera West and Steadfast. (Dkt.  
19 No. 11-34.) The parties agreed to entry of a confession of judgment for \$516,889 against  
20 Steadfast. (Dkt. No. 11-35.) They also agreed to entry of a confession of judgment for  
21 \$5,426,858 against Madera West. (Dkt. No. 11-37.) Colony Insurance Company, which defended  
22 Steadfast as a named insured and Madera West as an additional insured, agreed to pay the  
23 Association \$300,000. (Dkt. No. 11-34 at 2.) The Association agreed not to seek to execute the  
24 judgments against either Steadfast or Madera West. (Dkt. No. 11-34 at 3.) In exchange, Madera  
25 West and Steadfast assigned their rights against First Specialty to the Association. (Dkt. No. 11-  
26 34 at 2.)

1 The claims at issue in this case are similar to those at issue in another case pending before  
2 the Court, *Madera West Condominium Association v. First Specialty Insurance Corporation*,  
3 C12-0857-JCC (W.D. Wash.) (“first action”). The parties to both cases are also the same. The  
4 instant action was filed a few days after the Court denied the Association’s untimely motion for  
5 leave to amend its complaint in the first action. The Association’s arguments supporting its  
6 motion for summary judgment (Dkt. No. 10) are similar to arguments made in its motion for  
7 summary judgment in the first action (C12-0857-JCC, Dkt. No. 31).

## 8 **II. DISCUSSION**

### 9 **A. Summary Judgment Standard**

10 A court must grant summary judgment “if the movant shows that there is no genuine  
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.  
12 Civ. P. 56(a). An issue of fact is genuine if there is sufficient evidence for a reasonable jury to  
13 find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). At  
14 the summary judgment stage, evidence must be viewed in the light most favorable to the  
15 nonmoving party, and all justifiable inferences are to be drawn in the nonmovant’s favor. *Id.* at  
16 255.

17 Under Rule 56(d), the Court may deny a motion for summary judgment, or defer ruling  
18 on it, when “a nonmovant shows by . . . declaration that, for specified reasons, it cannot present  
19 facts essential to justify its opposition.” Fed. R. Civ. P. 56(d). First Specialty asks that if the  
20 Court does not deny the Association’s motion on the merits, it delay ruling on the motion. (Dkt.  
21 No. 16-1 at 23–25.) The Association filed its motion two months after filing the instant action,  
22 before a case schedule was set, and before any formal discovery had taken place. First  
23 Specialty’s counsel filed a declaration setting forth some of the discovery that she intends to take  
24 in this matter that she believes may be relevant to the issues raised in the Association’s motion.  
25 (Dkt. No. 14.) Because the central issue raised in the Association’s motion—whether First  
26 Specialty’s refusal to defend Madera West in the underlying construction defect suit was

1 permissible under Washington law—is nearly identical to the issue raised in the first action the  
2 Court deems it most efficient to address that issue. The additional discovery First Specialty seeks  
3 is not directly related to that question, but instead goes to damages, which the Court does not  
4 award at this juncture.

5 **B. Duty to Defend**

6 The Court refers the parties to its analysis of the duty to defend issue found its order in  
7 the first action. (C12-0857-JCC, Dkt. No. 58 at 11–16.) For the reasons stated in the Court’s  
8 order in the first action, it agrees with First Specialty that Madera West was not an additional  
9 insured under the 2004-2005 policy, which expired before Madera West contracted with  
10 Steadfast for work on the project. (*Id.* at 6.) The Court concludes, however, that Madera West  
11 was an additional insured under the terms of the 2005-2006 policy and specifically rejects First  
12 Specialty’s argument regarding first discovery of the damages, for the reasons set forth in the  
13 Court’s order in the first action. (*Id.* at 12–13.) Accordingly, the Court concludes that First  
14 Specialty breached its duty to defend Madera West in bad faith.

15 **C. Scope of Liability**

16 First Specialty argues that even if it failed to defend in bad faith, and Madera West is  
17 entitled to a determination of coverage by estoppel, that coverage can only extend to damages  
18 caused by Steadfast’s work. (Dkt. No. 16-1 at 15.) The Court agrees. Under *Ledcor Indus.*  
19 (*USA*), *Inc. v. Mut. of Enumclaw Ins. Co.*, 206 P.3d 1255, 1250–61 (Wash. Ct. App. 2009), a  
20 finding of bad faith and coverage by estoppel “does not operate to create coverage.” Under the  
21 clear terms of the 2005-2006 policy, Madera West’s coverage is limited to damages arising from  
22 Steadfast’s work done under written contractual agreements with Madera West. (Dkt. No. 11-5 at  
23 31.) To the extent that the confession of judgment against Madera West is based on damages  
24 caused by work performed by Madera West itself or by other subcontractors, there is no  
25 coverage for those damages. Moreover, the Court agrees with First Specialty that based on the  
26 documents in the record, particularly the statements of the Association’s experts, it appears that

1 the confession of judgment entered against Steadfast accounts for all damages potentially  
2 covered under the policy. The Court also notes that the payment from Colony Insurance to the  
3 Association on behalf of Madera West and Steadfast appears to cover a large portion of the total  
4 damages caused by Steadfast's defective work.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiff's motion for summary judgment (Dkt. No. 10) is  
7 GRANTED in part.

8 DATED this 6th day of August 2013.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE